

PAETEC
Referral Endorser Agreement
Additional Terms and Conditions

1. Appointment and Acceptance. Subject to the terms and conditions of this Agreement, PAETEC authorizes Referral Endorser to serve as a non-exclusive independent contractor to refer to PAETEC potential retail customers for PAETEC's products and services as listed on the attached Schedule B (the "Products") utilizing the Schedule A Sales Referral Form attached to this Agreement in the territory identified in the attached Schedule C (the "Territory"). Referral Endorser accepts such appointment and represents to PAETEC that it has all approvals, authorizations, and/or registrations necessary to lawfully procure customers for PAETEC in the Territory pursuant to the terms of this Agreement, and that it is not prohibited in any way from entering into or performing this Agreement by any other agreement, policy, commitment, law, or regulation. Referral Endorser agrees to use its best efforts to refer potential customers to PAETEC, and expressly acknowledges that it is granted no right, privilege, or authority to offer for sale any of PAETEC's products or services outside of the Territory. Referral Endorser shall participate in a meeting at least once every three (3) months with a designated PAETEC employee to review past and future Sale Leads.

2. Term and Termination.

- (a) The initial term of this Agreement is 36 months. Unless PAETEC or Referral Endorser provides written notice to terminate the Agreement at least 45 days prior to the end of the initial term, the Agreement will automatically renew for successive three-year renewal terms at the same terms and conditions.
- (b) PAETEC shall have the right to terminate this Agreement immediately upon written notice to Referral Endorser in the event of (i) any misrepresentation made by Referral Endorser to any customer or prospective customer relating to PAETEC's products or services; (ii) any fraudulent activity on the part of Referral Endorser; or (iii) any violation of Section 5 of this Agreement by Referral Endorser.
- (c) Except with respect to any breach covered by subsection (b) above, a party may terminate this Agreement on thirty (30) days' written notice if the other party materially breaches this Agreement and fails to cure the breach within such thirty day period.
- (d) Except with respect to any breach covered by subsection (b) above, PAETEC may terminate this Agreement in its sole discretion on thirty (30) days written notice to the Referral Endorser.
- (e) Upon any termination of this Agreement, Referral Endorser shall immediately return to PAETEC the originals and all copies of any information, documents, and other materials provided to it by PAETEC.

3. Submission and Acceptance of Referrals. All referrals from Referral Endorser to PAETEC must be submitted to PAETEC via a properly completed Sales Referral Form (see Schedule A) in order to be eligible for commissions under this Agreement. All referrals submitted and any orders related thereto shall be subject to the written acceptance of PAETEC in its sole discretion before any orders shall become final and binding. Referral Endorser shall have no signatory authority to bind PAETEC to any agreement, and PAETEC reserves the right to reject any referral submitted by Referral Endorser. All services shall be provided by PAETEC solely pursuant to written agreements prepared and supplied by PAETEC and executed by the customer and PAETEC. All billing shall be rendered directly to the customer by PAETEC.

4. Pricing/Terms of Service. The prices and terms and conditions of sale of PAETEC's products and services shall be set by PAETEC. PAETEC expressly reserves the right to change the prices, terms, and conditions of sale, and/or to expand, reduce, or modify the products and services it offers, at any time without prior notice to Referral Endorser. Referral Endorser agrees that it shall not impose any direct or indirect charge on customers relating to PAETEC's products and services without PAETEC's prior written consent. Referral

Endorser further agrees that it will make no warranties or representations about PAETEC's products and services other than those specifically authorized by PAETEC.

5. Customers. All customers referred by Referral Endorser and accepted by PAETEC under this Agreement shall be and shall remain customers of PAETEC for the purpose of the provision of communications products and services sold to such customer, notwithstanding any termination of this Agreement. Referral Endorser shall not terminate, attempt to terminate, or otherwise interfere in any way with PAETEC's relationship with any such customer without the prior written consent of PAETEC. Nothing in this Agreement shall prohibit Referral Endorser from selling its own products and services to the customers referred to PAETEC by Referral Endorser hereunder, *provided that* Referral Endorser shall not solicit such customers to purchase telecommunications products or services that are in competition with the PAETEC products and services, either directly or as an agent or referral endorser for any other telecommunications carrier. If Referral Endorser violates this prohibition during the term of this Agreement, PAETEC may terminate this Agreement pursuant to Section 2(b) above. The obligations of this Section 5 shall survive termination of this Agreement and if Referral Endorser violates this prohibition after this Agreement has been terminated, any obligation of PAETEC to pay commissions to Referral Endorser shall immediately and irrevocably terminate.

6. Commissions.

(a) Referral Endorser shall be paid a commission on Net Billed Revenue (as defined below) on the Products calculated according to the commission schedule set forth in this Agreement, within thirty (30) days following the month in which retail customers procured by Referral Endorser hereunder are invoiced by PAETEC.

(b) Net Billed Revenue means the monthly recurring and usage revenue generated from use of the Commissionable Products from PAETEC retail customers procured by Referral Endorser hereunder for the applicable month, net of customer adjustments, deductions or credits, applicable taxes or surcharges, other regulatory or governmental assessments, equipment charges, third party pass through charges (including, but not limited to, local loop charges, bundled EFS lease charges, NAC, RAS, PICC, USF, FSLC, SMS database or 800 # fee charges, EUCL, equipment charges or feature charges) and any one-time or non-recurring fees. A commission report will be provided to Referral Endorser with each commission payment and will (i) reflect those customers procured by Referral Endorser for PAETEC during the term of this Agreement and (ii) reflect PAETEC revenue for such customer usage for the applicable month.

(c) Referral Endorser shall not be entitled to commissions on customer invoices which remain unpaid for greater than ninety (90) days from the date of the invoice. Accordingly, PAETEC shall have the right to deduct or offset from Referral Endorser's commission payments on an ongoing basis, and to retain such deductions or offsets for PAETEC's own account, all commission payments previously made to Referral Endorser relating to invoices which are not paid by the customer within this stated ninety (90) day period.

(d) Notwithstanding any provision of this Agreement to the contrary, Referral Endorser shall not be entitled to commissions on any revenue generated by any PAETEC customer: (i) for which Referral Endorser is an employee, officer or director; (ii) for which payment of any commission is prohibited by applicable law or the customer's respective procurement policies or (iii) for sales of Services prior to the Effective Date of this Agreement. With respect to all referrals made by Referral Endorser to PAETEC, Referral Endorser shall be required to represent Referral Endorser's relationship with the customer to PAETEC.

(e) Referral Endorser is not entitled to commissions for any customer who had been a PAETEC customer at any time during the six month period immediately preceding PAETEC's receipt of the customer order for services under this Agreement.

(f) PAETEC shall not be liable for payment of any commissions owed to Referral Endorser on any eligible account more than 180 days in arrears. For avoidance of any doubt, if PAETEC determines the Referral Endorser was eligible to, but did not, receive commissions on a particular account, PAETEC shall be required to pay any applicable commission up to a maximum 180 days in arrears.

(g) In cases where this Agreement is terminated by PAETEC in accordance with Section 2(b) or 2(c), PAETEC shall stop paying commissions to Referral Endorser as of the date of termination. If termination by

PAETEC in accordance with Section 2(d), Referral Endorser shall be entitled to receive commissions on Commissionable Revenue during the initial term contract that Customer remains a PAETEC customer.

7. Withholding. As a condition precedent to executing a PAETEC Referral Endorser Agreement, all Referral Endorsers shall provide PAETEC with a completed IRS form W-9 indicative of Referral Endorser's tax status.

8. Independent Contractors. The relationship created by this Agreement shall be that of independent contractor and not of employer and employee or partners. The Parties shall not have, or hold themselves out as having, the power or authority to bind or create liability for the other by their intentional or negligent acts. Referral Endorser shall be solely responsible for and shall pay all its expenses incurred in connection with the performance of its duties under this Agreement and shall not be entitled to receive any fringe benefits or other benefits of any kind provided by PAETEC to its employees. Referral Endorser shall be solely responsible for the payment of all taxes (including estimated taxes) payable with respect to commissions earned by it pursuant to this Agreement.

9. Confidentiality. Referral Endorser shall keep confidential all information disclosed by PAETEC to Referral Endorser for purposes of this Agreement. All such information shall remain the sole and exclusive property of PAETEC, and it may not be directly or indirectly disseminated to any third party without the prior written consent of PAETEC. The provisions of this Section 9 shall survive termination of this Agreement.

10. Intellectual Property/Approval of Advertising. Referral Endorser agrees that PAETEC is the exclusive owner of all trademarks and tradenames relating to the products and services provided by PAETEC. Referral Endorser may use such trademarks and tradenames only for the purpose of advertising and promoting PAETEC's products and services, and Referral Endorser shall acquire no proprietary or other rights with respect to such tradenames, trademarks or other intellectual property of PAETEC. All advertising by Referral Endorser regarding PAETEC's products and services is subject to PAETEC's prior written approval.

11. Limitation of Liability.

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF REVENUE, LOSS OF PROFITS, OR LOSS OF CUSTOMERS, CLIENTS OR GOODWILL ARISING IN ANY MANNER FROM THIS AGREEMENT AND/OR THE PERFORMANCE OR NONPERFORMANCE HEREUNDER.

12. Non-Solicitation.

(a) Referral Endorser agrees that for the greater of: (i) the duration of this Agreement or (ii) as long as Referral Endorser is entitled to receive commissions pursuant to this Agreement, Referral Endorser shall not solicit in competition with PAETEC any person, business or other entity which is a PAETEC customer or which has been a customer of PAETEC during the one year period immediately preceding termination of this Agreement or induce or attempt to persuade any PAETEC employee to terminate his or her employment relationship to enter into other employment. Nothing herein shall modify the obligations of Referral Endorser under Section 5 of this Agreement.

(b) Except as expressly permitted by this Agreement, Referral Endorser shall not, during the term of this Agreement or at any time following termination of this Agreement, make use of any list of PAETEC customers or otherwise divulge any trade secrets or other confidential information of PAETEC.

(c) The following provision shall apply to the interpretation and enforcement of subparagraphs (a) and (b) above: (i) since other remedies cannot fully compensate PAETEC for a violation, PAETEC shall be entitled, in addition to any other remedies or relief available to it, to injunctive relief to prevent a violation or halt a continuing violation of the covenants set forth in subparagraphs (a) and (b) above; (ii) if, in any action before a court or agency empowered to enforce this Agreement, any covenant is found to be unenforceable, such

covenant shall be deemed modified to the extent necessary to make it enforceable; and (iii) if PAETEC must commence litigation to enforce its rights under this Section 12, it may also recover its reasonable attorney's fees from Referral Endorser in connection with the litigation.

(d) In the event of a violation by Referral Endorser of any of the prohibitions set forth in subparagraphs (a) and (b) above, PAETEC may immediately and irrevocably terminate the payment of any and all commissions that may be payable to Referral Endorser hereunder, regardless of whether PAETEC seeks or obtains injunctive relief pursuant to subparagraph 12(c).

(e) The provisions of this Section 12 shall survive termination of this Agreement.

13. Assignment. The rights and obligations of PAETEC under this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of PAETEC. Referral Endorser acknowledges that the services to be rendered by Referral Endorser are unique and personal. Accordingly, Referral Endorser may not assign any of its rights under this Agreement nor delegate any of its duties or obligations under this Agreement without the prior written consent of PAETEC.

14. Miscellaneous. All notices under this Agreement shall be in writing and shall be given by personal delivery, or by registered or certified mail or overnight courier, return receipt requested, to the addresses set forth at the beginning of this Agreement (or another address designated by notice), and shall be deemed given upon receipt. This Agreement, including its Schedule(s), represents the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements, written or oral, between the parties with respect to its subject matter. Except as stated in this section 14, this Agreement may only be amended, modified, or supplemented by a separate written document duly executed by authorized representatives of both parties. The exception is that the Referral Endorser acknowledges and agrees that PAETEC has the sole discretion to modify the applicable commission structure when the PAETEC legacy plans are integrated, and such modifications will be binding on the Referral Endorser upon receipt of written notice from PAETEC to Referral Endorser. No term or provision of this Agreement shall be waived, and no breach or default excused, unless such waiver or excuse is in writing and signed by the party to which it is attributed. No consent by a party to, or waiver of, a breach or default, by the other, whether expressed or implied, shall constitute a consent to or waiver of any subsequent breach or default. If any provision of this Agreement shall be held to be invalid or unenforceable, the validity or enforceability of the remaining provisions shall not in any way be affected or impaired thereby, but rather this Agreement shall be construed as if not containing the invalid or unenforceable provision. However, if such provision is an essential element of this Agreement, the parties shall promptly and in good faith attempt to negotiate a substitute Agreement. The laws of the State of New York shall govern the interpretation, enforcement, and validity of this Agreement. Any action or proceeding involving this Agreement shall be commenced and maintained only in the courts of the State of New York. Each party agrees to be subject to the personal jurisdiction of the courts of New York State.

This Agreement can only be signed by a PAETEC Director of Business Development or higher level officer and signatures by any other PAETEC employee shall not bind the company. This offer shall become null and void if it is not signed by Referral Endorser within ninety (90) days of the date set forth in the first sentence of this Agreement.

Schedule B

Products

Referral Endorser shall be entitled to compensation on the sales of the following PAETEC products to retail customers referred to PAETEC by Referral Endorser

- Local Dialtone
- Local Measured Service
- Intrastate/Intralata Service
- Dedicated Interstate
- Dedicated 800
- Switched Interstate
- Switched 800
- International Switched/Dedicated
- Canada Switched/Dedicated
- Dedicated Internet Access
- MPLS VPN
- Frame Relay
- Web Security
- Hosted Firewall
- E-mail Security
- Dedicated Hosted Server
- Shared Web Hosting
- Data Backup and Recovery
- Audio and Web Conferencing

Schedule C

Territory

Referral Endorser is authorized to refer customers to PAETEC which Referral Endorser has solicited on behalf of PAETEC anywhere in the United States where PAETEC is authorized and certified to do business, subject to the following restrictions:

- Section 3 of this Agreement (“Submission and Acceptance of Referrals”) governs all solicitation and procurement of customers by Referral Endorser.
- Customers must be located in the contiguous forty-eight (48) states and must be serviced by one of the following RBOC/ILEC companies:
 - Verizon
 - Qwest
 - AT&T
 - Embarq
 - Citizen (Frontier)
 - Cincinnati Bell
- Referral Endorser may not solicit any of the following without the prior written consent of PAETEC:
 - Information Providers
 - Internet Service Providers
 - Licensed Interexchange Carriers
 - Licensed Competitive Local Exchange Carriers
 - Independent Local Exchange Carriers
 - Local Exchange Carriers
 - Colleges and Universities
 - Government Agencies
 - Affinity Groups and Associations
 - Residential Customers